IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6695 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA

Versus

GOVERNMENT OF GUJARAT AND ANOTHER

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Appearance :
MR YN RAVANI for Petitioner
MR AJ DESAI, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/10/2005

ORAL JUDGMENT

1. The present petition has arisen on account of the dispute between the Union of India and Government of Gujarat. A piece of land measuring

1250 sq. mts. was allotted to Central Public Works Department('CPWD', for short)of the petitioner-Union of India.

2. By an order dated 18.08.1987, the Government of Gujarat handed over the said plot to CPWD on various conditions mentioned in the Resolution dated 18.07.1987 issued by the Road & Building Department of the Government of Gujarat-Respondent No.1. As per condition No.6 of the said resolution, CPWD was to submit a plan regarding construction of office etc., within 6 months. The said Department was also required to complete the construction within 2 years from the date of receipt of obtaining possession.

3. However, on account of delay on the part of the said Department, the construction in question was not completed within the stipulated time. Therefore, the Collector, Gandhinagar initiated proceedings vide order dated 10th March, 1993 and imposed penalty which is clear from the document placed at Annexure-F to the petition. Accordingly, a penalty of Rs.4000/- was imposed on the petitioner-Union of India. It was

also ordered to confiscate the said land from the petitioner-Union of India and hand it back to the Respondent No.1-State Government. The said order came to be challenged before the Secretary, Revenue Department, Government of Gujarat. The Secretary, Revenue Department, Government of Gujarat by his order dated 26.10.1994 confirmed the order dated 10.03.1993 passed by the Collector, Gandhinagar Against the said order the present Special Civil Application has been filed by the petitioner-Union of India.

4. Mr. Y. N. Ravani, learned Advocate appearing for the Petitioner-Union of India, on instructions from the Executive Engineer of CPWD, has submitted that the said land is now being utilized by the petitioner- Union of India for offices etc.

5. Mr. Y.N. Ravani, learned Advocate for the petitioner has relied upon a decision of the learned Single Judge of this Court in Special Civil Application No.6696 of 1995 dated 25.08.2005. While dealing with the identical situation the learned

Single Judge, in the said matter has observed as under,

> “ I have heard Shri. Y.N. Ravani, learned Advocate for the petitioner and Smt. Manisha Shah, Assistant Government Pleader and carefully perused the record. A reading of the order dated 12.6.1993 passed by the Collector (learned Counsel for the petitioner fairly concedes that the date mentioned in the order Annexure-'E' vernacular as well as English translation is not correct) shows that while recording a finding that the petitioner had violated the conditions of allotment, the officer concerned did not apply his mind to reply dated 11.03.1993 filed by Executive Engineer, Central Public Works Department to the effect that delay in the construction was occasioned on account of non-communication of the sanction by the Town Planning Department. It has not been disputed before me by the learned Assistant Government Pleader that the building plan submitted by the petitioner

remained pending with the Town Planning Department for more than three years and six months. She also conceded that delayed submission of the building plan was not a ground specified in the show cause notice issued by the Collector. In this view of the matter, it must be held that the order passed by the Collector for imposition of penalty is vitiated due to violation of rules of natural justice and non-application of mind to the relevant factors.

I am further of the view that the reason assigned by Deputy Secretary (Appeals), Revenue Department for dismissing the revision filed by the petitioner is legally unsustainable. Whether or not the petitioner could have sought extension of time specified in the conditions of allotment was not at all relevant for determining the legality of order dated 12.6.1993 passed by the Collector. The officer concerned was required to consider whether the petitioner had deliberately

delayed construction of the quarter. However, without examining this all important issue, he dismissed the revision petition.

In my view, the trivial delay of one month and three days in the submission of the building plan could not have been made a ground for imposition of penalty and that too in the backdrop of the fact that the building plan remained lying with the Town Planning Department of the Government of Gujarat for almost three years and eight months.

In the result, the Special civil Application is allowed. The order dated 12.6.1993 and 26.10.1994 passed by the Collector, Gandhinagar and Deputy Secretary (Appeals), Revenue Department are declared illegal and quashed. However, the parties are left to bear their own costs."

6. It is also pointed out by the learned Advocate for the petitioner-Union of India that this

matter is also identical to the one referred to herein above. In view of the reasonings give in the said decision, this petition is also required to be allowed

7. Considering the aforesaid aspect of the matter, and considering the fact that the land in question is actually used by the petitioner-Union of India as argued by Mr. Ravani, and considering the judgment of a co-ordinate Bench referred to hereinabove, this petition is required to be allowed and is accordingly allowed. Order dated 10.06.1993 passed by the Deputy Collector [annexure 'F'] and order dated 26.10.1994 passed by the Deputy Secretary Appeals, Revenue Department [annexure 'G'] are quashed and set aside. The petition is accordingly allowed. Rule made absolute, with no order as to costs.

(P.B.MAJMUDAR, J.)

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